

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

JUSTIN GUY, individually and on  
behalf of those similarly situated,

Plaintiff,

v.

Case No. 2:20-cv-12734-MAG-EAS  
HON. MARK A. GOLDSMITH

ABSOPURE WATER COMPANY, LLC  
a domestic limited liability company,

Defendant.

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**DEFENDANT’S RESPONSE IN OPPOSITION TO PLAINTIFFS’  
MEMORANDUM ON PREPRESENTATIVE TESTIMONY FOR  
GENERALIZED PRACTICES**

Defendant hereby submits this memorandum in response to Plaintiffs’ memorandum on representative testimony for “generalized practices” (Dkt. 196) and pursuant to the Court’s order (Dkt. 191).

Plaintiffs’ memorandum states:

To the extent this is even considered “representative testimony”, Plaintiff intends to obtain testimony from a few Plaintiffs to establish the following general practices for all Plaintiffs: Plaintiffs’ general duties and responsibilities, Defendant’s operational procedures, Defendant’s criteria for route assignment, Defendant’s check in/out process, Defendant’s (lack of) timekeeping methodology, and Defendant’s method of compensation.

(Dkt. 196, PageID.8757).

Defendant stresses that this proposed testimony cannot be treated as “representative” but must only be presented as individual testimony. The requirements for representative testimony remain the same – the evidence must be shown to be reliable and there must be a need for the testimony to be given on a “representative” basis. *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 454-456, 136 S.Ct. 1036, 1046, 194 L.Ed.2d 124 (2016). Plaintiffs have made no such showing.

### CONCLUSION

For the reasons set forth above, Absopure respectfully requests this Honorable Court to deny the use of “representative” testimony with respect “general practices”.

Dated: November 29, 2023

*s/ Ronald G. Acho*

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**LOCAL RULE CERTIFICATION**

I, Michael O. Cummings, certify that this document complies with Local Rule 5.1(a), including: double-spaced (except for quoted materials and footnotes); at least one- inch margins on the top, sides, and bottom; consecutive page numbering; and type size of all text and footnotes that is no smaller than 10-1/2 characters per inch (for non-proportional fonts) or 14 point (for proportional fonts).

Dated: November 29, 2023

/s/ Michael O. Cummings

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 29, 2023 I electronically filed the foregoing paper with the Clerk of the Court using the ECF system, which will send notification to all parties of record. I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants: None.

Dated: November 7, 2023

/s/ Michael O. Cummings

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